District of Columbia

OFFICIAL CODE

2001 Edition

Volume 14

Title 28

Commercial Instruments and Transactions
(Subtitle I, Articles 4 to End)

2012
Pocket Part

Replacing 2011 pocket part in back of 2001 main volume

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PREFACE

These annual cumulative pocket parts update the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) as of May 10, 2012.

Notes of decisions of District and Federal courts include cases published through May 1, 2012.

Current legislation between pamphlets or pocket parts can be obtained on WestlawNext or Westlaw DC-LEGIS Database.

The unannotated District of Columbia Official Code can be accessed on the District of Columbia Council website at http://www.dccouncil.us.

Later laws and annotations will be cumulated in the subsequent pamphlets and annual Pocket Parts.

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DISTRICT OF COLUMBIA OFFICIAL CODE 2001 Edition

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LOCAL BUSINESS AFFAIRS

TITLE 28

COMMERCIAL INSTRUMENTS AND TRANSACTIONS.

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28:4–301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

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28:4–406. Customer's duty to discover and report unauthorized signature or alteration.

Part 1. General Provisions and Definitions.

§ 28:4–103. Variation by agreement; measure of damages; action constituting ordinary care.

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2. Summary judgment

Fact issues existed as to whether union local was adversely dominated by individual employees who engaged in scheme to embezzle union funds, as to whether local's officials could have discovered scheme earlier, and as to whether bank at which local maintained checking account used in scheme failed to exercise ordinary care, precluding summary judgment in union's action against bank seeking recredit of account. American Federation of Teachers, AFL-CIO v. Bullock, 2008, 539 F.Supp.2d 161, reconsideration granted, vacated 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Federal Civil Procedure ⇦ 2487

Bank could shorten the one-year Uniform Commercial Code (U.C.C.) statute of repose period for reporting unauthorized checks or withdrawals to 60-days through contract with bank customer. Peters v. Riggs Nat. Bank, N.A., 2008, 942 A.2d 1163. Banks And Banking ⇦ 148(4)

Part 2. Collection of Items: Depositary and Collecting Banks.

§ 28:4–214. Right of charge-back or refund; liability of collecting bank; return of item.

Notes of Decisions

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1. In general

Pursuant to the Uniform Commercial Code, payor bank was permitted to "charge back" to customer's account funds that had been improperly advanced on counterfeit money order that had been deposited. De Arellano v. Citibank, 135 WLR 1709 (Super. Ct. 2007).

Part 3. Collection of Items: Payor Banks.

§ 28:4–301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

Notes of Decisions

In general 1

1. In general

Pursuant to the Uniform Commercial Code, payor bank was permitted to "charge back" to customer's account funds that had been improperly advanced on counterfeit money order that had been deposited. De Arellano v. Citibank, 135 WLR 1709 (Super. Ct. 2007).

Part 4. Relationship Between Payor Bank and Its Customers.

§ 28:4–401. When bank may charge customer's account.

Notes of Decisions

Counterfeit money 2

2. Counterfeit money

Pursuant to the Uniform Commercial Code, payor bank was permitted to "charge back" to customer's account funds that had been improperly advanced on counterfeit money order that had been deposited. De Arellano v. Citibank, 135 WLR 1709 (Super. Ct. 2007).

§ 28:4–406. Customer's duty to discover and report unauthorized signature or alteration.

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1. Unauthorized signature

In action by union against bank arising from union employees' use of the union's bank account in an embezzlement scheme, District of Columbia statute of repose for claims against banks, precluding bank customers from asserting against the bank an unauthorized signature or alteration if the customer did not discover and report it within one year of receiving statement, was applicable to union's claims relating to "red flag" checks signed by employees, even though employees were authorized to sign checks for the union's official business; employees were not authorized to sign checks for their own use and as part of the embezzlement scheme. American Federation of Teachers, AFL-CIO v. Bullock, 2009, 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Banks And Banking ⇦ 148(4)

3. Liability of bank to depositor, payee, or owner

In action by union against bank arising from union employees' use of union's bank account in an embezzlement scheme, District of Columbia statute of repose for claims against banks, precluding bank customers from asserting against the bank an unauthorized signature or alteration if the customer did not discover and report it within one year of receiving statement, was applicable to union's claims for aiding and abetting conversion and breach of fiduciary duty in addition to union's claim for negligence, despite union's contention that statute only dealt with the negation of a duty by bank; statute established an absolute notice requirement for customers as a prerequisite to bringing any claim against bank. American Federation of Teachers, AFL-CIO v. Bullock, 2009, 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Banks And Banking ⇦ 148(4)

4. Limitation of actions

The one-year Uniform Commercial Code (U.C.C.) statute of repose for asserting an unauthorized signature or alteration claim against a bank was not tolled by bank customer's incapacitation or subsequent death. Peters v. Riggs Nat. Bank, N.A., 2008, 942 A.2d 1163. Limitation Of Actions ⇦ 80

Bank could shorten the one-year Uniform Commercial Code (U.C.C.) statute of repose period for reporting unauthorized checks or withdrawals to 60-days through contract with bank customer. Peters v. Riggs Nat. Bank, N.A., 2008, 942 A.2d 1163. Banks And Banking ⇦ 148(4)

4.5. Defenses

Even if a statute of repose was a statute of limitations defense that was required to be pled in an answer to avoid waiver, bank sufficiently raised the defense in action against it by a union arising from union employees' use of union's bank account in an embezzlement scheme; bank's answer stated as an affirmative defense that union failed to reasonably take advantage of preventative and corrective opportunities to avoid harm, bank raised the statute of repose in response to interrogatory seeking factual details in support of this affirmative defense, and the parties argued the applicability of the statute in their respective motion for and opposition to summary judgment. American Federation of Teachers, AFL-CIO v. Bullock, 2009, 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Limitation Of Actions ⇦ 183(1)

District of Columbia statute of repose for claims against banks, requiring bank customers to discover and report unauthorized signatures or alterations to the bank and establishing a notice requirement before customers could bring any claim against the bank, did not impose a prior precondition of good faith, and thus bank could assert statute of repose defense regardless of whether it acted in good faith. American Federation of Teachers, AFL-CIO v. Bullock, 2009, 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Banks And Banking ⇦ 148(4)

Bank was not equitably estopped from raising a statute of repose defense in action by union against the bank stemming from union employees' use of union's bank account in an embezzlement scheme, as there was no evidence bank engaged in fraud or that the employees' fraudulent conduct could be imputed to bank. American Federation of Teachers, AFL-CIO v. Bullock, 2009, 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Limitation Of Actions ⇦ 13

5. Summary judgment

Fact issues existed as to whether union local was adversely dominated by individual employees who engaged in scheme to embezzle union funds, as to whether local's officials could have discovered scheme earlier, and as to whether bank at which local maintained checking account used in scheme failed to exercise ordinary care, precluding summary judgment in union's action against bank seeking recredit of account. American Federation of Teachers, AFL-CIO v. Bullock, 2008, 539 F.Supp.2d 161, reconsideration granted, vacated 605 F.Supp.2d 251, appeal dismissed 2009 WL 5125394. Federal Civil Procedure ⇦ 2487

Article 4A

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Section
28:4A-303. Erroneous execution of payment order.

Part 3. Execution of Sender's Payment Order By Receiving Bank.

§ 28:4A-303. Erroneous execution of payment order.

Notes of Decisions

Unjust enrichment 1

1. Unjust enrichment

Construction company's retention of duplicate payment of $474,677, which bank mistakenly transferred to company on behalf of news agency that had hired company for remodeling project, was unjust, and thus company was unjustly enriched under District of Columbia law and bank was entitled to restitution; company received actual notice of bank's mistake, in form of agency's letter informing company that duplicate payment was in error, before it credited agency's account. Qatar Nat. Bank v. Winmar, Inc., 2009, 650 F.Supp.2d 1. Implied And Constructive Contracts ⇦ 3

Article 5

Letters of Credit.

Section
28:5–118. Applicability.

Section
28:5–120. Security interest of issuer or nominated person.

§ 28:5–118. Applicability.

This article applies to a letter of credit that is issued on or after the effective date of this article. This article does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before the effective date of this article.

(April 9, 1997, D.C. Law 11–238, § 2, 44 DCR 923.)

§ 28:5–120. Security interest of issuer or nominated person.

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Article 9, but:

(1) A security agreement is not necessary to make the security interest enforceable under § 28:9–203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

(Oct. 26, 2000, D.C. Law 13–201, § 201(f)(2), 47 DCR 7576; Mar. 13, 2004, D.C. Law 15–105, § 62, 51 DCR 881.)

Historical and Statutory Notes

Effect of Amendments

D.C. Law 15–105 validated a previously made technical correction.

Legislative History of Laws

Law 15–105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15–437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15–291 and transmitted to both Houses of Congress for its review. D.C. Law 15–105 became effective on March 13, 2004.

Article 6

Bulk Transfers.

Section

28:6–112. Compliance with section 47–4461.

§ 28:6–112. Compliance with section 47–4461.

In addition to the requirements of this article, all transferees shall comply with § 47–4461.

(June 9, 2001, D.C. Law 13–305, § 407(b), 48 DCR 334.)

Historical and Statutory Notes

Legislative History of Laws

Law 13–305, the "Tax Clarity Act of 2000", was introduced in Council and assigned Bill No. 13–586, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on October , 2000, and November 8, 2000, respectively. Signed by the Mayor on December 13, 2000, it was assigned Act No. 13–501 and transmitted to both Houses of Congress for its review. D.C. Law 13–305 became effective on June 9, 2001.

Miscellaneous Notes

Section 410 (f) of D.C. Law 13–305 provides:

"Section 407 shall apply as of January 1, 2001."

Article 9

Secured Transactions.

Part 1. General Provisions.

Subpart 1. Short Title, Definitions, and General Concepts.

Section

28:9–102. Definitions and index of definitions.

Part 2. Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement.

Subpart 1. Effectiveness and Attachment.

28:9–203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

Part 3. Perfection and Priority.

Subpart 1. Law Governing Perfection and Priority.

Section

28:9–306. Law governing perfection and priority of security interests in letter-of-credit rights.

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28:9–311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

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28:9–610. Disposition of collateral after default.
28:9–611. Notification before disposition of collateral.
28:9–624. Waiver.

Part 1. General Provisions.

Subpart 1. Short Title, Definitions, and General Concepts.

§ 28:9–102. Definitions and index of definitions.

Notes of Decisions

5. Debtor

The guarantor of a secured loan was a "debtor" entitled to notice of sale by the secured party, even though she did not own the collateral, and, thus, the guaranty was unenforceable for the deficiency judgment. HEW Federal Credit Union v. Battle, 2001, 772 A.2d 252. Secured Transactions ⇦ 230; Secured Transactions ⇦ 240

Part 2. Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement.

Subpart 1. Effectiveness and Attachment.

§ 28:9–203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

Notes of Decisions

1. Security agreements

Once the District of Columbia issues a certificate of title to a motor vehicle, a security interest can be perfected in that vehicle only by its being noted on the certificate of title, but, beforehand, the rule of first in time, first in right, prevails. In re Drake, 2006, 363 B.R. 1. Secured Transactions ⇦ 87; Secured Transactions ⇦ 138

Creditor's security interest in Chapter 13 debtor's vehicle was established by debtor's schedules, which treated creditor as having secured claim to the extent of vehicle's scheduled value, and security agreement attached to proof of claim, which, though signed only by debtor, evidenced enforceable security interest under District of Columbia's version of Uniform Commercial Code (UCC). In re Drake, 2006, 363 B.R. 1. Bankruptcy ⇦ 2927

2. Possession by secured party

Under District of Columbia law, by taking possession of security deposit posted by restaurant to secure its performance under restaurant lease, hotel both created and perfected a security interest in funds deposited. In re Timothy Dean Restaurant & Bar, 2006, 342 B.R. 1. Secured Transactions ⇦ 89

Part 3. Perfection and Priority.

Subpart 1. Law Governing Perfection and Priority.

§ 28:9–306. Law governing perfection and priority of security interests in letter-of-credit rights.

Notes of Decisions

In general 1
Construction and application 2

1. In general

Under District of Columbia law, perfected security interest that hotel possessed in security deposit posted by restaurant to secure its performance under restaurant lease continued in interest bearing account into which hotel was required to place restaurant's security deposit, as being in nature of "proceeds" of security deposit. In re Timothy Dean Restaurant & Bar, 2006, 342 B.R. 1. Secured Transactions ⇦ 168

2. Construction and application

Under District of Columbia law, interest-bearing bank account into which hotel deposited security deposit that it received from its tenant did not have to come into tenant's possession in order for hotel's perfected security interest in security deposit to continue in bank account, as being in nature of "proceeds" of security deposit. In re Timothy Dean Restaurant & Bar, 2006, 342 B.R. 1. Secured Transactions ⇦ 168

Ten-day period applicable under District of Columbia law when secured creditor must take action in order for its perfected security interest to continue in proceeds of original collateral was never triggered, as to security deposit in which hotel possessed perfected security interest to secure its

tenant's performance under restaurant lease, when funds that hotel received from tenant were deposited into interest-bearing account and converted from money into bank account, where bank account, the proceeds of security deposit, was at all times under hotel's control and never came into possession of tenant. In re Timothy Dean Restaurant & Bar, 2006, 342 B.R. 1. Secured Transactions ⇦ 168

Subpart 2. Perfection.

§ 28:9–311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

Notes of Decisions

In general 1

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1. In general

While the District of Columbia Uniform Commercial Code (UCC) imposed general requirements for perfection of security interests, which altered common law rule of "first in time, first in right," those requirements, which by their terms were not applicable to security interest in motor vehicle, did not vary or displace common law requirements for perfection of security interest in vehicle. In re Dorton, 2006, 346 B.R. 271, reversed 509 F.3d 528, 379 U.S.App.D.C. 1. Secured Transactions ⇦ 86; Secured Transactions ⇦ 87

Part 6. Default.

Subpart 1. Default and Enforcement of Security Interest.

§ 28:9–610. Disposition of collateral after default.

Notes of Decisions

3. Forfeitures

Under the "absolute preclusion rule" concerning deficiency judgments, a secured creditor that fails to notify the debtor of a proposed sale of repossessed property forfeits the right to recover a deficiency judgment. HEW Federal Credit Union v. Battle, 2001, 772 A.2d 252. Secured Transactions ⇦ 240

§ 28:9–611. Notification before disposition of collateral.

Notes of Decisions

2. —— Deficiency judgment, notice requirement

Under the "absolute preclusion rule" concerning deficiency judgments, a secured creditor that fails to notify the debtor of a proposed sale of repossessed property forfeits the right to recover a deficiency judgment. HEW Federal Credit Union v. Battle, 2001, 772 A.2d 252. Secured Transactions ⇦ 240

§ 28:9–624. Waiver.

Notes of Decisions

1. Waiver of rights

Under the "absolute preclusion rule" concerning deficiency judgments, a secured creditor that fails to notify the debtor of a proposed sale of repossessed property forfeits the right to recover a deficiency judgment. HEW Federal Credit Union v. Battle, 2001, 772 A.2d 252. Secured Transactions ⇦ 240

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